

**TESTIMONY IN FAVOR OF HB 95
BEFORE THE JUDICIARY COMMITTEE
JERRY KECK, ADMINISTRATOR
EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
JANUARY 10, 2011**

Mr. Chairman and members of the committee, my name is Jerry Keck. I am the administrator of the Employment Relations Division of the Department of Labor and Industry. First, I want to thank Rep. McNutt for agreeing to carry this bill. Rep. McNutt sponsored a major bill revising the Human Rights Act in the 1997 session. The Department has worked closely with him since then to insure that we implemented the intent of those changes.

HB 95 is the department's proposal to clean up 4 specific issues in the Montana Human Rights Act.

1. Section 1 (page 1) clarifies that the Department rather than the Commission may issue subpoenas relating to the investigation of a complaint filed. It also removes the ability of a party to request that the Department issue a subpoena during the informal investigation process. This is an informal process. Over the past 12 years that this provision has been in the Act, very few subpoenas have been issued by the Department. Most of the subpoenas requested by the parties have been at the request of the claimant's attorney for unrelated information that is not needed for the informal investigation. If the case cannot be resolved at the informal level and must proceed to a formal legal hearing, the Montana Rules of Civil Procedure and Administrative Procedure Act apply which give the parties the ability to subpoena needed information in the context of a formal legal proceeding.
2. Section 2 (pages 2-3) adds language that makes clear that it is not a violation of the Montana Human Rights Act for a business to voluntarily offer an Indian preference in employment to Indians living on or near a reservation. This language is identical to the language in the federal statute, Title VII of the Civil Rights Act. This insures that employers are not caught in the situation where they must offer an Indian preference under federal law; but are not allowed to offer the same preference under state law.
3. Section 3 (pages 3-6) corrects the use of the terms lessee and lessor. It also deletes the term "adaptive design" which is ambiguous and undefined in the statute. This term does not add any clarifying value to the statute and only creates ambiguity and uncertainty.
4. Section 4 (pages 6) is simply a renumbering to match the addition in section 2.
5. Section 5 (pages 7-8) provides that if the parties voluntarily choose to enter into mediation, the time to complete the investigation may be extended for up to 45 days

Mr. Chairman, and members of the Committee, the department is requesting your support for HB 95. I will try to answer any questions that you may have. Thank you.